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Special Counsel for Trustee
Leslie T. Gladstone,

UNITED STATES BANKRUPTCY COURT
Southern District of California

In re

CREATIVE CAPITAL LEASING GROUP,
LLC,

Debtor.

Case No. 07-04977-PB7

Chapter 7

Adv. Proc. No. 09-90464

**FIRST AMENDED COMPLAINT FOR
AVOIDANCE AND RECOVERY OF
FRAUDULENT TRANSFERS AND
OBJECTION TO CLAIM**

LESLIE T. GLADSTONE, Chapter 7 Trustee,

Plaintiff,

v.

STANFORD AND ASSOCIATES,

Defendant.

Dept: 4
Judge: Peter W. Bowie

Plaintiff Leslie T. Gladstone, the chapter 7 trustee (the "Trustee" or "Plaintiff") of debtor Creative Capital Leasing Group, LLC (the "Debtor"), by and through her counsel, as and for her Complaint against defendant Stanford and Associates ("Defendant"), respectfully alleges on behalf of the estate of the Debtor as follows:

JURISDICTION AND VENUE

1. This proceeding arises in the bankruptcy case of *In re Creative Capital Leasing Group, LLC*, Case No. 07-04977-PB7 (the "Case"), which was commenced on September 10, 2007

1 (the "Petition Date") when Debtor filed a voluntary petition under chapter 11 of the Bankruptcy
2 Code in the United States Bankruptcy Court for the Southern District of California (the "Court").

3 2. This Court has jurisdiction over this proceeding under 28 U.S.C. §§ 157 and 1334,
4 and Title 11 of the United States Code (the "Bankruptcy Code").

5 3. This adversary proceeding is a core proceeding for which the Court is authorized to
6 hear and determine all matters in accordance with, inter alia, 28 U.S.C. § 157(b), subject to review
7 under 28 U.S.C. § 158.

8 4. Venue is proper in the Southern District of California pursuant to 28 U.S.C. § 1409
9 because the Debtor's Case is pending in this Court.

10 **PARTIES**

11 5. Plaintiff is the Chapter 7 Trustee and was appointed by the United States Trustee for
12 the Southern District of California on or around October 10, 2008 to represent the interests of the
13 Debtor's estate (the "Estate") in connection with the Debtor's Case.

14 6. Plaintiff is informed and believes and thereon alleges that defendant Stanford and
15 Associates is a law firm based and doing business in San Diego, California.

16 **ALLEGATIONS**

17 7. Plaintiff is informed and believes and thereon alleges that the Debtor was formed in
18 or around 1994 by David Winick ("David") and Daniel Winick, who were the initial named
19 members of the Debtor. Prior to the Petition Date, the Debtor was engaged in the business of
20 managing and leasing commercial real estate, residential real estate and heavy equipment.

21 8. Plaintiff is informed and believes and thereon alleges that on or around May 1, 1999,
22 Daniel Winick "withdrew" as a member of the Debtor. At all times thereafter, and at all times
23 relevant herein, David was the sole named member of the Debtor.

24 9. Plaintiff is informed and believes and thereon alleges that at all times relevant herein,
25 the Debtor was managed and controlled by David and certain of his family members, and/or their
26 agents, affiliated entities or representatives (the "Winick Family").

27 10. Plaintiff is informed and believes and thereon alleges that long before the Petition
28 Date, the Debtor began realizing significant cash flow deficiencies based on, among other things, the

1 Winick Family's use of the Debtor's funds for their own personal use, including payment of personal
 2 loans and expenses of the Winick Family, and a severe decrease in the value of the Debtor's assets.
 3 All the while, the Debtor continued to solicit millions of dollars in loans from friends and family
 4 members to fund the Debtor's operations. Ultimately, the Debtor became unable to pay its debts as
 5 they became due.

6 11. Plaintiff is informed and believes and thereon alleges that between September 10,
 7 2003 and the Petition Date, the Debtor transferred at least \$40,000.00 of the Debtor's funds to
 8 Defendant. Plaintiff is informed and believes and thereon alleges that these funds were transferred
 9 to pay for the personal legal expenses of Jack and Wendy Winick, David's father and mother
 10 respectively, and that the Debtor did not receive any consideration for such transfers.

11 12. To the extent Defendant has filed a proof of claim in the Debtor's Case or has
 12 otherwise requested payment from the Debtor, the Estate or the Trustee (collectively, "Claims"), this
 13 Complaint is not intended to be, nor should it be construed as, a waiver of Plaintiff's right to object
 14 to such Claims for any reason, including, but not limited to, Bankruptcy Code section 502, and such
 15 rights are expressly reserved. Notwithstanding this reservation of rights, the Plaintiff seeks certain
 16 relief under Bankruptcy Code section 502 as set forth below.

17 **FIRST CLAIM FOR RELIEF**
 18 **Avoidance of Fraudulent Transfers**
 19 **(11 U.S.C. §§ 544, 548(a)(1)(A), California Civil Code §§ 3439, *et seq.*)**

20 13. Plaintiff incorporates by reference paragraphs 1 through 12 of this Complaint as
 21 though set forth in full.

22 14. Plaintiff is informed and believes and thereon alleges that the Debtor transferred
 23 funds or other interests in its property (the "Funds") in the amount of at least \$40,000.00 to or for the
 24 benefit of Defendant (the "Identified Transfers"). Attached hereto as Exhibit "A" is a schedule of
 25 the Identified Transfers. The Identified Transfers were each made to and for the benefit of
 26 Defendant.

27 15. Plaintiff is informed and believes and thereon alleges that in addition to the Identified
 28 Transfers, the Debtor may have transferred other Funds to Defendant which the Trustee has not yet
 been able to identify (the "Unidentified Transfers," together with the Identified Transfers, the

1 “Transfers”). During the course of this adversary proceeding, Plaintiff may learn (through discovery
 2 or otherwise) of now Unidentified Transfers made to Defendant. It is Plaintiff’s intention to avoid
 3 and recover all fraudulent transfers made to Defendant, including payments made to Defendant from
 4 the Debtor’s or David’s bank accounts. Plaintiff reserves the right to amend this Complaint to
 5 include further information regarding the Transfers, including information regarding any now
 6 Unidentified Transfers.

7 16. Plaintiff is informed and believes and thereon alleges that the Funds transferred were
 8 Funds to which the Debtor was legally entitled and the Funds have not been repaid to the Debtor.

9 17. Plaintiff is informed and believes and thereon alleges that the Transfers were made
 10 with the actual intent to hinder, delay, and/or defraud the Debtor’s creditors, in that the Debtor had
 11 no business purpose to make such Transfers to Defendant, and such Transfers were made to the
 12 detriment of the Debtor’s actual creditors.

13 18. The Transfers constitute fraudulent transfers under 11 U.S.C. §§ 544 and
 14 548(a)(1)(A), and California Civil Code §§ 3439, *et seq.*, and therefore are avoidable by the Trustee.

15 19. Plaintiff is informed and believes and thereon alleges that at the time the Transfers
 16 were made, a creditor existed who held an unsecured claim allowable under 11 U.S.C. § 502,
 17 including, but not limited to, Foster Pepper, PLLC.

18
 19 **SECOND CLAIM FOR RELIEF**
Avoidance of Fraudulent Transfers
 20 **(11 U.S.C. §§ 544, 548(a)(1)(B), California Civil Code §§ 3439, *et seq.*)**

21 20. Plaintiff incorporates by reference paragraphs 1 through 19 of this Complaint as
 22 though set forth in full.

23 21. Plaintiff is informed and believes and thereon alleges that the Debtor received less
 24 than reasonably equivalent value for the Transfers, in that the Transfers were made for the benefit of
 25 Jack and Wendy Winick and the Debtor received no consideration in return for such Transfers.

26 22. Plaintiff is informed and believes and thereon alleges that the Debtor was insolvent
 27 on the date that the Transfers were made or became insolvent as a result of the Transfers.
 28

1 23. Plaintiff is informed and believes and thereon alleges that at the time of the Transfers,
2 the Debtor was engaged in business or transactions, or was about to engage in business or
3 transactions, for which any property remaining with the Debtor was unreasonably small capital.

4 24. Plaintiff is informed and believes and thereon alleges that the Debtor intended to
5 incur, or believed that the Debtor would incur, debts that would be beyond the Debtor's ability to
6 pay as such debts matured.

7 25. The Transfers constitute fraudulent transfers under 11 U.S.C. §§ 544 and
8 548(a)(1)(B), and California Civil Code §§ 3439, *et seq.*, and therefore are avoidable by the Trustee.

9 26. Plaintiff is informed and believes and thereon alleges that at the time the Transfers
10 were made, a creditor existed who held an unsecured claim allowable under 11 U.S.C. § 502,
11 including, but not limited to, Foster Pepper, PLLC.

12 **THIRD CLAIM FOR RELIEF**
13 **Recovery of Avoided Transfers or Value Thereof**
14 **(11 U.S.C. § 550)**

15 27. Plaintiff incorporates by reference paragraphs 1 through 26 of this Complaint as
16 though set forth in full.

17 28. Upon avoidance of the Transfers under the First and/or Second Claims for Relief
18 alleged herein, the Trustee is entitled to recover the Funds transferred or the value of the Transfers
19 from the Defendant as the initial, immediate, or mediate transferee, or the entity or person for whose
20 benefit the fraudulent transfer was made pursuant to 11 U.S.C. § 550.

21 **FOURTH CLAIM FOR RELIEF**
22 **Disallowance of Claim**
23 **(11 U.S.C. § 502(d))**

24 29. Plaintiff incorporates by reference paragraphs 1 through 28 of this Complaint as
25 though set forth in full.

26 30. Plaintiff is informed and believes and thereon alleges that Defendant is an entity from
27 which property is recoverable under 11 U.S.C. § 550.

28 31. Plaintiff is informed and believes and thereon alleges that Defendant is a transferee of
the Transfers, which are avoidable under 11 U.S.C. §§ 544 and 548, and California Civil Code §§
3439, *et seq.*, as set forth above.

33. Any and all Claims of Defendant and/or their assignees against the Estate must be disallowed until such time as Defendant pays or turns over to Plaintiff an amount equal to Defendant's liability under 11 U.S.C. § 550.

WHEREFORE, Plaintiff prays for judgment as follows:

1. For a determination by the Court that the Transfers were fraudulent transfers within the meaning of 11 U.S.C. §§ 544 and 548(a)(1)(A), and/or California Civil Code §§ 3439, *et seq.*;

2. For a judgment against Defendant avoiding the Transfers, in the aggregate amount of at least \$40,000, plus any additional amounts according to proof; and

3. For such other and further relief as the Court deems just and proper.

4. For a determination by this court that the Transfers were fraudulent transfers within the meaning of 11 U.S.C. §§ 544 and 548(a)(1)(B), and/or California Civil Code §§ 3439, *et seq.*;

5. For a judgment against Defendant avoiding the Transfers, in the aggregate amount of at least \$40,000, plus any additional amounts according to proof; and

6. For such other and further relief as the Court deems just and proper.

7. For a judgment granting Plaintiff the right to recover from Defendant, as the initial, immediate, or mediate transferees, or as the entities or persons for whose benefit the Transfers were made, the Transfers avoided or the value of the Transfers avoided under the First and/or Second Claims for Relief; and

8. For such other and further relief as the Court deems just and proper.

9. For a judgment disallowing any Claims of Defendant against the Debtor's Estate; and

1 10. For such other and further relief as the Court deems just and proper.

2 As to All Claims for Relief:

3 The Trustee seeks prejudgment and postjudgment interest, attorneys' fees, costs of suit, and
4 all other amounts allowed by law.

5
6 Dated: January 22, 2010

/s/ Joseph R. Dunn

Jeffrey A. Davis

Joseph R. Dunn

MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO P.C.

Special Counsel for Leslie T. Gladstone

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EXHIBIT A

Date of Transfer	Amount of Transfer	Method of Transfer
08/11/05	\$25,000.00	Check
12/13/05	\$15,000.00	Check
Total	\$40,000.00	